

High Mountain Inspection Service, Inc.

June 18, 2002

Mr. Frank Congel, Director
Office of Enforcement
U. S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Dear Mr. Congel:

Reply to a Notice of Violation May 7, 2002 EA-01-302
Answer to a Notice of Violation May 7, 2002 EA-01-302

This is a combined Reply to a Notice of Violation and Answer to a Notice of Violation. High Mountain Inspection Service, Inc. gratefully acknowledges the two extensions granted by Region IV for the preparation and submission of this letter. High Mountain Inspection Service, Inc. protests the imposition of the civil penalty and holds that the U. S. Nuclear Regulatory Commission did not fully and properly consider the facts as presented in the February 27, 2002 predecisional enforcement conference, and in the April 4, 2002 letter which was submitted in response to representations in the predecisional enforcement conference that such a response would be beneficial to High Mountain Inspection Service, Inc. prior to a decision being made on the alleged violations. High Mountain Inspection Service, Inc. requests remission or at least significant mitigation of the proposed penalty for the reasons set forth below.

As a result of the May 8, 2002 NRC press release concerning the proposed \$6,000 fine High Mountain Inspection Service, Inc. has and may continue to incur significant business losses. High Mountain Inspection Service, Inc. has been removed from bid lists of existing customers, and may not be considered as a bidder by potential new customers. The principal reasons seem to stem from the press release's undue focus on violations, not presenting a balanced picture of the vastly significant number of items that High Mountain Inspection Service, Inc. was currently performing satisfactorily or better, and did perform satisfactorily or even extraordinarily better in the past. It is acknowledged that the press release did try to place the reported exposures of the two radiographers in perspective, but the wording certainly did not convey that the reported exposures were barely over the five-rem yearly limit. The press release also stated that the overexposures occurred as a result of the failure of the company's manager to follow NRC requirements concerning the administration of radiation safety programs. Mitigating circumstances have been presented involving the purchase of the personnel monitoring service vendor by another company; the unilateral change of the monthly exchange period to a bimonthly exchange period by the purchasing personnel monitoring service company; and the delay in obtaining timely personnel monitoring reports during this buy out process late in the calendar year so that effective control of exposures to individuals could be exercised. All these factors have not apparently been considered by the NRC. The current loss of business to High Mountain Inspection Service, Inc. represents a greater impact than the proposed \$6,000 fine.

High Mountain Inspection Service, Inc. presented adequate evidence during the predecisional enforcement conference and in the April 4, 2002 letter that the daily radiation safety activities were being conducted by the Assistant Radiation Safety Officer, who was also Vice President and a stockholder of the company. As presented in the predecisional enforcement conference this individual was terminated for a number of reasons, including personal behavior reasons. Considering his position in the management of the company as Vice President and knowledge of the radiation safety program as

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evidenced by his length of service, he meets the criteria in Section VIII of the NUREG-1600 for "Enforcement Actions Involving Individuals." Apparently this was never considered by the NRC.

The NRC May 7, 2002 letter states that "...although you became aware of the overexposures in January 2000, you failed to take prompt correction action to: (1) ensure that you were meeting the conditions of your license by investigating instances where personnel exceed 500 mrem in any one month and 350 mrem per month average; and (2) conduct an overall review of your radiation program to determine whether there were other requirements that you were not meeting, particularly those that may have contributed to the overexposures." This is begging the issue since reasons for the overexposure were investigated and determined to be the unilateral change in the monthly exchange period; the delay of reports due to the buy out of the personnel monitoring service provider; and the overexposures not being predicted by the daily pocket dosimeter readings. There was no reason to believe or indicate that there were any problems in the radiation safety program being conducted by the Assistant Radiation Safety Officer, since the prior inspection under his auspices only resulted in the failure to meet the new dU annual leak test requirements. Also, it must be noted that there were no exposures over regulatory limits in 2001, so therefore effective management was exercised in this area "particularly those that may have contributed to the overexposures."

Again the NRC May 7, 2002 letter states: "While we acknowledge these corrective actions, they were not prompt nor sufficiently developed at the time of the conference to warrant corrective action credit." High Mountain Inspection Service, Inc. has stated numerous times to NRC management that only the overexposure violations were presented to High Mountain Inspection Service, Inc. at the October 2001 post inspection close out. High Mountain Inspection Service, Inc. was totally surprised when informed of the additional violations in the January 30, 2002 discussions and upon receipt of the NRC February 12, 2002 letter. It is the collective recollection of the High Mountain Inspection Service, Inc. representatives present at the February 27, 2002 predecisional enforcement conference that we also referred to this discrepancy, but did not dwell unnecessarily on it, so as not to confound the attending NRC employee who conducted the post inspection close out. High Mountain Inspection Service, Inc. recognizes that this is a matter of one person's word versus another person, but High Mountain Inspection Service, Inc. also has reason to believe that there has been similar previous occurrence(s). Since High Mountain Inspection Service, Inc. first learned of the additional violations verbally on January 30, 2002, and in writing upon receipt of the NRC February 12, 2002 letter then the corrective actions presented at the February 27, 2002 enforcement conference were extremely prompt and adequately developed for the less than one month time frame. These very prompt corrective actions and the excellent past radiation safety history of High Mountain Inspection Service, Inc. must be taken into positive consideration for corrective action credit.

1. High Mountain Inspection Service did not limit two adult radiographers to 5 rems TEDE for the 2000 calendar year.

Violation admitted with mitigating extenuating circumstances. See above discussion and April 4, 2002 letter. High Mountain Inspection Service, Inc. reported exposures of 5,114 mrem and 5,961 mrem which are slightly different from the exposures stated in the NRC May 7, 2002 letter. It is reemphasized that time frame of available personnel monitoring data did not permit effective control of over exposures

2. High Mountain Inspection Service on several occasions from January 2000 through September 2001 failed to formally investigate all instances where personnel exceeded 500 mrem in one month or a cumulative average exposure of 350 mrem per month.

Violation admitted with mitigating extenuating circumstances. See above discussion and April 4, 2002 letter. It is noted that there were no excessive exposures in calendar year 2001. Also, it must be recognized that the ALARA program of formal investigation of personnel exceeding 500 mrem in

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one month or a cumulative average exposure of 350 mrem per month is a self imposed procedure which far exceeds ALARA program accepted by the NRC from other industrial radiography companies.

3. High Mountain Inspection Service failed to submit a written report to the USNRC within 30 days after learning of doses in excess of the occupational dose limits for two individuals who exceeded 5 rem in the 2000 calendar year and did not provide a copy of the report to the individuals.

Violation admitted with mitigating circumstances. See above discussion and April 4, 2002 letter.

4. High Mountain Inspection Service failed to report to the individuals annually and in writing their doses for the calendar years of 1999 and 2000.

Violation admitted with mitigating circumstances. See above discussion and April 4, 2002 letter.

5. High Mountain Inspection Service failed to conduct inspections of the job performances for each radiographer and radiographer's assistant during an actual industrial radiography operation at intervals not to exceed six months.

Violation admitted for a limited number of occurrences. It was stated in the April 4, 2002 letter: "As presented in the February 27, 2002 meeting, many job site inspections of radiography personnel had been performed and this violation is not indicative of the inspections which had been performed by High Mountain Inspection Service. Job site inspections are now current. An administrative tickler system has been instituted to ensure that job site inspections will be performed on a timely basis." Field inspections are current.

6. High Mountain Inspection Service failed to provide annual refresher safety training for each radiographer and radiographer's assistance at intervals not to exceed 12 months for the period of January 1999 through October 3, 2001.

Violation denied on the basis that periodic tailgate safety meetings were held, but not documented. See April 4, 2002 letter.

7. High Mountain Inspection Service failed to provide training for it's hazmat employees as required by 49 CFR Part 172 Subpart H from December 1999 through October 2, 2001.

Violation admitted for some, but not all employees. It was stated in the April 4, 2002 letter that: "The transportation hazmat training requirement has a three year recurrency and still have some employees current from their 1999 training. Also, not every employee is classified as a transportation hazmat employee pursuant to 49 CFR 171.8. Dr. Roy Parker has provided some transportation hazmat training material which will be used in the periodic tailgate safety meeting to meet the transportation hazmat training requirement, and he will present formal transportation hazmat training in conjunction with his planned trips to Casper in May-June and November-December."

8. High Mountain Inspection Service failed to periodically review the radiation protection program content and implementation for calendar years 1999 and 2000.

Violation admitted. The April 4, 2002 letter stated: "These circumstances were a contributing factor to the dismissal of the Assistant Radiation Safety Officer, who was also an officer of the company and a stockholder. An independent audit of the High Mountain Inspection Service radiation protection program was performed by Dr. Roy Parker in Casper, Wyoming on February 26-27, 2002 prior to the February 27, 2002 meeting with the U.S. Nuclear Regulatory Commission."

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9. High Mountain Inspection Service did not confine its possession and use of byproduct material to the locations authorized by the license.

Violation technically admitted recognizing that a license amendment request had been filed and that discussion had been held with some U.S. Nuclear Regulatory Commission staff members on several occasions.

10. High Mountain Inspection Service RSO failed to ensure that the radiation safety activities were being performed in accordance with approved procedures and regulatory requirements in the daily operation of the radiation safety program.

Violation admitted to limited, but not all, radiation safety activities. See April 4, 2002 letter and the above discussion concerning the press release. This violation is nothing more than a summary of the above violations which have been discussed above. High Mountain Inspection Service, Inc. did ensure that radiation safety activities were being performed in accordance with approved procedures and regulatory requirements in the daily operation of the radiation safety program.

Sincerely,



Bill R. Fraser
President and RSO

cc: Mr. Ellis Merschoff
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